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any injury in transit to which the alleged paralysis of the animal could be reasonably attributed.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 957-960; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 717; 14 Va.-W. Va. Enc. Dig. 201.]

Error to Corporation Court of Fredericksburg.

Action by the Allendale Farm, Incorporated, against the Adams Express Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

A. T. Embrey, of Fredericksburg, and *W. R. Meredith*, of Richmond, for plaintiff in error.

Wm. W. Butzner, of Fredericksburg, for defendant in error.

COMMONWEALTH et al v. SCHMELZ.

March 12, 1914.

[81 S. E. 45.]

1. Taxation (§ 552½*)—Compromise of Taxes—Authority of Auditor.—Code 1904, §§ 702, 702a, relating to the authority of the auditor to make adjustment of old and disputed claims on approval of the Attorney General and indorsed as approved by the judge of the circuit court of the city of Richmond, has no application to a compromise and settlement of a suit for taxes in a court of competent jurisdiction.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

2. Taxation (§ 552½*)—Compromise of Taxes—Authority of Auditor.—Where an auditor, acting for the commonwealth, agrees, with the consent of the Attorney General, to accept the sum awarded by the circuit court in settlement and discharge of all claims for taxes against a certain party, the agreement is binding on the commonwealth.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

3. Taxation (§ 552½*)—Compromise and Settlement—Persons Bound.—Where, in a proceeding to be relieved from an erroneous assessment of taxes, the state, county, and city claimed judgment for omitted taxes, an agreement by the auditor, acting for the commonwealth, to abide by the judgment of the circuit court, while binding on the commonwealth, has no binding force on the county and city.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1067; Dec. Dig. § 552½.* 13 Va.-W. Va. Enc. Dig. 114.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

4. Taxation (§ 494*)—Omitted Taxes—Recoverable in Suit to Reduce Assessment.—Code 1904, § 508, relating to the collection of taxes upon omitted property, is applicable to taxes due to county, cities, and towns, as well as taxes due the commonwealth; and where, in a proceeding to be relieved from an erroneous assessment of taxes, claims for omitted taxes, are made by the commonwealth, county, and city, the county and city are entitled to recover taxes for the past years.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 884-888; Dec. Dig. § 494.* 14 Va.-W. Va. Enc. Dig. 1002.]

5. Appeal and Error (§ 142*)—Right of Appeal—Cities—Counties—"Person."—Since counties and cities may sue and be sued, and their right of appeal has always been recognized, and in view of Code 1904, § 5, cl. 13, declaring that "persons" may extend and be applied to bodies politic and corporate, as well as individuals, and section 3454, providing that a person, who thinks himself aggrieved by a judgment, decree, or order in a controversy concerning the right of the state, county, or municipal corporation to levy tolls or taxes, or involving the construction of a statute, ordinance, or county proceeding imposing taxes, may petition for a writ of error, etc., counties and cities have the right of appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 914-919; Dec. Dig. § 142.* 1 Va.-W. Va. Enc. Dig. 468; 14 Va.-W. Va. Enc. Dig. 69; 15 Va.-W. Va. Enc. Dig. 55.]

6. Taxation (§ 494*)—Recovery of Omitted Taxes—Discretion of Court.—Where an original application to be relieved from an erroneous assessment of taxes was brought in 1911, and in that proceeding the commonwealth, county, and city, claimed for omitted taxes for previous years, it was discretionary with the court to allow a recovery for the tax of 1912, which was admittedly due.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 884-888; Dec. Dig. § 494.* 14 Va.-W. Va. Enc. Dig. 1002.]

Error to Circuit Court of Elizabeth County.

Proceedings by Henry L. Schmelz against the Commonwealth of Virginia and others to be relieved from an alleged erroneous assessment of taxes. From the judgment rendered, defendants bring error. Reversed.

The Attorney General and *S. Gordon Cumming* and *E. E. Montague*, both of Hampton, for plaintiffs in error.

J. Winston Read, of Newport News, and *Jno. N. Sebrell, Jr.*, of Norfolk, for defendants in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.